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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 616

JUSTUS S. WARDELL, Receiver, District National Bank of Washington,

Petitioner,

vs.

DISTRICT OF COLUMBIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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INDEX.

Subject Index.

	Page
Jurisdiction	2
Opinions of the courts below	2
Statement of the case	2
Statutes involved	4
Questions presented	4
Specification of errors	5
Reasons relied on for allowance of the writ	6
Discussion	7
Conclusion	20
Appendix A	21
Appendix B	29
Appendix C	32

Table of Cases.

Anderson v. *Morris & Essex R. R. Co.* (C. C. A., 2d, 1914), 216 Fed. 83, 91	16
Auten v. *United States National Bank* (1899), 174 U. S. 125, 141	15
Bank of California Natl. Assn. v. *Richardson* (1919), 248 U. S. 476, 483	18
Beikler v. *Guenther* (Iowa, 1903), 96 N. W. 895, 896	16
Chemical Natl. Bank v. *Hartford Deposit Co.* (1896), 161 U. S. 1, 9	19
Commissioner of Internal Revenue v. *Field* (C. C. A. 2d, 1933), 67 F. (2d) 876, 877	15
Cook County Natl. Bank v. *United States* (1882), 107 U. S. 445, 448	14
Deitrick v. *Greaney* (1940), 309 U. S. 190, 194	15
Domeneck v. *National City Bank of N. Y.* (1935), 294 U. S. 199, 204	19
Easton v. *Iowa* (1903), 188 U. S. 220, 231	14
Fidelity Bankers Trust Co. v. *Helvering* (D. C. App., 1940), 113 F. (2d) 14, 17	18

132576

Page

First Natl. Bank of Gulfport v. *Adams* (1922), 258 U. S. 362, 364 19
Flint v. *Stone Tracy Co.* (1910), 220 U. S. 107 17
Goddard v. *Chaffie* (1861), 84 Mass. 395 16
Grindley v. *First National Bank of Detroit* (C. C. A. 6th, 1936), 87 F. (2d) 110, 112 ..... 9, 14
Gully v. *First Natl. Bank of Meridian* (C. C. A. 5th, 1936), 81 F. (2d) 502, 506 ..... 19, 20
Hazen v. *Hardee,* 64 App. D. C. 346, 78 F. (2d) 230, 232 9
Jackson, Rec., v. *United States* (1885), 20 Ct. Cl. 298, 304 8
Johnston, Rec., v. *United States* (1881), 17 Ct. Cl. 157, 172 ..... 8, 11
Korbi v. *Springfield Institution for Savings* (1917), 245 U. S. 330, 333 9
Lawrence Natl. Bank v. *Rice* (C. C. A. 10th, 1936), 83 F. (2d) 642, 644 9
Leonard v. *Gage* (C. C. A. 4th, 1938), 94 F. (2d) 19, 24 15
Liberty Natl. Bank v. *McIntosh* (C. C. A. 4th, 1927), 16 F. (2d) 906, 908 14
Littlehales v. *District of Columbia* (D. C. App., 1940), 116 F. (2d) 297 ..... 17, 18
Lyon Lumber Co. v. *Harrison* (C. C. A. 7th, 1940), 113 F. (2d), 443, 448 18
McCoach v. *Minehill Ry. Co.* (1913), 228 U. S. 295, 307 17
National Bank v. *Colby* (1874), 21 Wall. 609, 613 14
Owensboro Natl. Bank v. *Owensboro* (1899), 173 U. S. 664, 669 ..... 18, 19
People v. *Goldfogle* (1922), 234 N. Y. 345, cer. den. 261 U. S. 620 18
People v. *Loughman* (C. C. A. 2d, 1938), 100 F. (2d) 387 9
Public Service Ry. Co. v. *Herold* (C. C. A. 3d, 1916), 229 Fed. 902, 907 16
Richards v. *Commissioner of Internal Revenue* (C. C. A, 9th, 1936), 81 F. (2d) 369, 372 16
Rosenblatt v. *Johnston* (1881), 104 U. S. 462, 463 19

Page

Sears v. *Hassett* (C. C. A. 1st, 1940), 111 F. (2d) 961, 964 16
Sloan v. *Commissioner of Internal Revenue* (C. C. A. 9th, 1933), 63 F. (2d) 666, 669 15
Talbott v. *Silver Bow County* (1891), 139 U. S. 438, 443 19
United States v. *Atlantic Coast Line* (C. C. A. 4th, 1938), 99 F. (2d) 6, 8 18
United States v. *Emery, Bird, Thayer Realty Co.* (1915), 237 U. S. 28, 32 ..... 16, 17
United States v. *Power Co.* (C. C. A. 4th, 1940), 108 F. (2d) 609, 610 9
United States v. *Sterling* (C. C. A. 4th, 1939), 106 F. (2d) 178, 180 9
Valuation Service Co. v. *Commissioner* (1940), 41 B. T. A. 811, 815 ..... 9, 10
Von Baumback v. *Sargent Land Co.* (1917), 242 U. S. 503, 514-516 16
White v. *Knox* (1884), 111 U. S. 784, 786 14
Wittnebel v. *Loughman* (C. C. A. 2d, 1935), 80 F. (2d) 222, 224 19
Zonne v. *Minneapolis Syndicate* (1911), 220 U. S. 187, 191 17

MISCELLANEOUS.

D. C. Code 1929, Title 20, Sec. 628, 634, 635 ..... 4, 10, 25
D. C. Code 1929, Supp. III, Title 20, Sec. 970 4
D. C. Code 1929, Supp. IV, Title 20, Sec. 970 ..... 4, 26, 27
D. C. Code 1929, Supp. V, Title 20, Sec. 760 ..... 4, 9, 18, 20, 28
Judicial Code, Sec. 240(a) 2
D. C. Revenue Act of 1937 ..... 2, 20
D. C. Revenue Act of 1938 3
Title 12, U. S. C., Sec. 192 ..... 4, 13, 21
Title 12, U. S. C., Sec. 194 ..... 8, 13, 15, 21
Title 12, U. S. C., Sec. 548 ..... 4, 9, 21
Title 12, U. S. C., Sec. 570 ..... 3, 5, 6, 7, 11, 13, 23
Title 28, U. S. C., Sec. 347(a) 2
Section 5234, Revised Statutes of United States 4, 21
Section 5236, Revised Statutes of United States 4, 21

	Page
Section 5219, Revised Statutes of United States	4, 9, 23
20 Stat. 105	4
20 Stat. 351	4
21 Stat. 460	4
22 Stat. 144	4
32 Stat. 619	4
39 Stat. 121	21
50 Stat. 688	4, 28
52 Stat. 363	4
52 Stat. 369	4
52 Stat. 579	24
54 Stat. 307	10
Congressional Record, 45th Congress, 2d Session, pp. 3627, 4696, 4758	8
Congressional Record, 45th Congress, 3d Session, pp. 1918, 1969	8

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DISTRICT OF COLUMBIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Justus S. Wardell, as Receiver of the District National Bank of Washington, an insolvent national banking association formerly doing business in the District of Columbia, by direction of the Comptroller of the Currency of the United States, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia rendered in the above captioned cause on June 16, 1941 (R. 38).

I.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered June 16, 1941. The jurisdiction of this Court to review this cause by writ of certiorari is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 347(a)).

II.

Opinions of the Courts Below.

The opinion of the District Court of the United States for the District of Columbia is reported in 32 Fed. Supp. 769, and appears in the record at p. 12.

The opinion of the United States Court of Appeals for the District of Columbia is not yet reported, but appears in the record at p. 35.

III.

Statement of the Case.

Pursuant to the provisions of the District of Columbia Revenue Act of 1937, and the amendatory provisions enacted in 1938, petitioner reported gross receipts of rentals from the operation of certain properties owned by the bank at the time of its suspension, and taken over by petitioner among the assets of the receivership.

The 1937 Act imposed a tax, determined by gross receipts for the calendar year 1936, for "the privilege of engaging in business" in the District of Columbia upon "each person so engaged". The term "business" was defined by the Act as including "the carrying on or exercising for gain or economic benefit * * * any trade, business, profession, vocation, or commercial activity", and the term

"person" was defined as including a "receiver". The 1938 Act imposed a similar tax on gross receipts for the calendar year 1937, and was amended to include as "business" the "rental of real estate and rental of real and personal property * * *".

Each Act provides for penalties for delinquency in the filing of the return and payment of the tax. Petitioner derived from gross receipts during each taxable year net rentals exceeding the taxes, interest and penalties claimed.

Respondent brought this action to recover taxes, interest and penalties alleged to be due under the taxing Acts in question, asserting that petitioner, by reason of collecting rentals from the properties of the receivership, was engaging in business during the two taxable years, and was, therefore, liable for the taxes, interest and penalties claimed.

Petitioner admitted collecting the rentals from the receivership properties, and receiving a net profit therefrom in excess of the amounts claimed, and the existence of the taxing Acts in question. Petitioner denied liability however, asserting that the taxing Acts did not apply to him as receiver of an insolvent national bank, because he was not engaged in business in the District of Columbia as defined by the Acts, and because under the provisions of the Act of Congress, known as the insolvent bank tax abatement statute (U. S. C., Title 12, Sec. 570), the tax is abated, since the payment of such tax would diminish the assets of the insolvent bank necessary for full payment of all its depositors (R. 27).

In the District Court a motion by petitioner for summary judgment was granted, the action was dismissed, and the taxes, interest and penalties claimed in the complaint were abated (R. 30). From this judgment an appeal was taken to the United States Court of Appeals for the District of Columbia, which ~~could~~ reversed the District Court (R. 38).

IV.

Statutes Involved.

Title VI of District of Columbia Revenue Act of 1937 (50 Stat. 688; D. C. Code 1929, Supp. III, Title 20, Sec. 970).[1]

Act of May 16, 1938, Amending D. C. Revenue Act of 1937 (52 Stat. 363; D. C. Code 1929, Supp. IV, Title 20, Sec. 970).

Act of Mar. 3, 1881, 21 Stat. 460, c. 134 (D. C. Code 1929, Title 20, Sec. 628).

Sec. 4 of Act of June 11, 1878, as amended, 20 Stat. 105 (D. C. Code 1929, Title 20, Sec. 634).

Sec. 3 of Act of July 1, 1882, as amended, 22 Stat. 144 (D. C. Code 1929, Title 20, Sec. 635).

U. S. C., Title 12, Sec. 570 (Sec. 22 of the Act of Mar. 1, 1879, 20 Stat. 351).

U. S. C., Title 12, Sec. 192 (Sec. 5234 of the Revised Statutes).

U. S. C., Title 12, Sec. 194 (Sec. 5236 of the Revised Statutes).

U. S. C., Title 12, Sec. 548 (Sec. 5219 of the Revised Statutes).

Section 6 of Act of July 1, 1902, as amended (32 Stat. 619; D. C. Code 1929, Supp. V, Title 20, Sec. 760).

V.

Questions Presented.

1. Whether the taxes, interest and penalties claimed in the suit are abated under the provisions of U. S. C. Title 12, Sec. 570 when the payment of such sums would diminish

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[1] Title VI of the District of Columbia Revenue Act of 1937, 50 Stat. 688, as amended 52 Stat. 363, expired June 30, 1939, D. C. Code Supp. V, Title 20, Sec. 970 *et seq.* See Sec. 16, 52 Stat. 369.

the assets of the bank necessary for the full payment of depositors.

2. Whether the provisions of U. S. C., Title 12, Sec. 570 operate to exempt insolvent national banks in receivership from Federal taxation only.

3. Whether a receiver of an insolvent national bank, collecting, in the course of liquidation, rentals from receivership properties formerly owned by the bank, is engaging in business in the District of Columbia.

4. Whether operating real estate and collecting rentals as an incident to liquidating properties formerly owned by the bank, and holding them until a sale can be made advantageous to creditors, subjects the receiver and the assets under his control to payment of a business privilege tax.

5. Whether the provisions of Title 20, Sec. 760, D. C. Code, 1929, limit the District of Columbia in its authority to tax personal property of national banks in the District solely to the tax on gross earnings or gross receipts provided by said statute.

6. Whether penalties can be assessed against a receiver of an insolvent national bank who in good faith resists payment of a tax which he considers inapplicable to the receivership.

VI.

Specification of Errors.

The United States Court of Appeals for the District of Columbia erred:

1. In holding that the taxes, interest and penalties provided by the District of Columbia Revenue Acts in question are not abated by the provisions of U. S. C., Title 12, Sec. 570 when the payment of such sums would diminish the

assets of the insolvent national bank necessary for the full payment of depositors.

2. In holding that the provisions of U. S. C., Title 12, Sec. 570 operate to exempt insolvent national banks in receivership from Federal taxation only.

3. In holding in effect that petitioner, as receiver of an insolvent national bank, was engaging in business in the District of Columbia when, in the course of liquidating the assets of the bank, petitioner collected rentals from properties owned by the bank.

4. In holding in effect that by operating real estate and collecting rentals as an incident to liquidating properties owned by the bank, the receiver and the receivership assets are subjected to payment of a tax for the privilege of doing business.

5. In not holding that Title 20, Sec. 760, D. C. Code 1929, providing for a tax on national banks in the District on their gross earnings or gross receipts, precludes other taxes on their personal property.

6. In holding that tax penalties can be assessed against a receiver of an insolvent national bank.

VII.

Reasons Relied On for Allowance of the Writ.

1. The United States Court of Appeals for the District of Columbia has decided in this case a question of general importance, which has not been, but should be settled by this Court.

2. The question is of great importance to the Comptroller of the Currency in liquidating banks, State and national, becoming insolvent or now in liquidation in the District of Columbia, because the decision of the Court of Appeals

is now being urged as a precedent for the collection of other local taxes from these insolvent institutions; also, similar tax claims against other bank receiverships in the District of Columbia are to be disposed of under the final decision in this case.

3. The question is of great importance in liquidating national banks becoming insolvent or now in liquidation in the several States, because the decision of the Court of Appeals may become a precedent for the collection of local State taxes from these insolvent institutions.

4. The question is of great importance because it affects vitally the interests of bank depositors who constitute a numerous class.

5. The Court of Appeals has not given proper effect to applicable decisions of this Court.

6. The decision of the Court of Appeals appears to be in conflict with its own decisions and with the decisions of other Circuit Courts of Appeal.

VIII.

Discussion.

(a) *U. S. C. Title 12, Sec. 570, exempted petitioner from payment of the taxes, interest and penalties claimed by respondent.*

This statute provides in part:

> "(a) Whenever and after any bank or trust company, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, has ceased to do business by reason of insolvency or bankruptcy, no tax shall be assessed or collected, or paid into the Treasury of the United States on account of such bank, or trust company, which shall diminish the assets thereof necessary for the full pay-

> ment of all its depositors; and such tax shall be abated from such national banks as are found by the Comptroller of the Currency to be insolvent; and the Commissioner of Internal Revenue, when the facts shall appear to him, is authorized to remit so much of the said tax against any such insolvent banks and trust companies organized under the State law as shall be found to affect the claims of their depositors."

It is shown, and not contested, that this bank "ceased to do business by reason of insolvency", and that the payment of the amounts claimed "will diminish the assets necessary for the full payment of all its depositors" (R. 9, 27). It was the intention of Congress in enacting this statute to protect the depositors from having the assets necessary for their full payment reduced by the payment of these taxes, which add nothing to the insolvent estate but reduce their *pro tanto* distributive share guaranteed by the National Bank Act, U. S. C., Title 12, Sec. 194. The legislative history behind enactment of the statute proves this.[2]

In *Johnston, Receiver,* v. *U. S.* (1881), 17 Court of Claims 157, the court, in interpreting this statute, said at page 172:

> "The act of March 3, 1879, now under consideration, was passed for the undoubted purpose of relieving depositors in national banks from the payment of certain taxes, not assessed upon them, but upon the banks of which they are only customers; taxes which, under the preexisting law, they would indirectly be obliged to pay when a bank is so insolvent that all its capital is gone and it has nothing left with which to pay taxes, except the money of its depositors."

See also to the same effect:

Jackson, Receiver, v. *U. S.* (1885), 20 Ct. Claims, 298, 304;

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[2] Congressional Record, 45th Congress, 2nd Session pp. 3627, 4696, 4758, 3rd Session pp. 1918, 1969.

Hazen v. *Hardee*, 64 App. D. C. 346, 78 F. (2d) 230, 232;
United States v. *Sterling* (C. C. A. 4th, 1939), 106 F. (2d) 178, 180;
United States v. *Power Company* (C. C. A. 4th, 1940), 108 F. (2d) 609, 610;
Valuation Service Co. v. *Commissioner* (1940), 41 B. T. A. 811, 815.

The National Bank Act should be given a liberal interpretation to protect depositors.

Korbly v. *Springfield Institution for Savings* (1917), 245 U. S. 330, 333;
Lawrence National Bank v. *Rice* (C. C. A. 10th, 1936), 83 F. (2d) 642, 644;
Grindley v. *First National Bank* (C. C. A. 6th, 1936), 87 F. (2d) 110, 112.

The court below held that the statute confers an exemption from Federal taxation only, and relied on *People* v. *Loughman* (C. C. A. 2nd, 1938), 100 F. (2d) 387. The cases are clearly distinguishable. The tax in the *Loughman* case was levied by the State of New York on the net income of the bank *before receivership*, as permitted by the National Bank Act (Section 5219 of the Rev. Stat., U. S. C. Title 12, Sec. 548). The statute (hereinafter discussed) fixes the limit of State power to tax national banks, and permits a tax on their net income as one of the four alternative forms of taxation permitted; hence Section 570 did not apply and the case is not in point. In the instant case the tax was levied against petitioner *after the bank's insolvency and closing*, and not under the District of Columbia Code section permitting taxation of national banks on gross receipts or gross earnings. (D. C. Code, 1929, Title 20, Sec. 760.)

The District of Columbia may suggest, in support of the foregoing position of the court below to the effect that said exemption statute of March 1, 1879, refers to Federal taxa-

tion only, that such construction is supported by the language of the statute which provides that:

> "no tax shall be assessed or collected, or paid *into the Treasury of the United States,* on account of such bank * * *". (Italics inserted.)

Without conceding the correctness of the narrow construction of the statute by the court below, it seems proper to point out, in response thereto, that the District of Columbia, as a municipal corporation, is an agency of the United States, and that taxes collected by the District of Columbia as a municipal corporation, *can be collected only by virtue of Federal statutes conferring such authority.* **Consequently, it follows that taxation levied by the District of Columbia is, in final analysis, Federal taxation and is within the literal scope of the abatement statute in that respect. This position of petitioner would seem further to be supported by the provisions of the Federal statutes (D. C. Code 1929, Title 20, c. 4, Secs. 628, 634, 635—Appendix, p. 25), to the effect that all moneys collected by the District of Columbia shall be paid into the Treasury of the United States, to be held subject to subsequent appropriation by Congress for payment of the expenses of the District of Columbia as a Federal agency.** For example, see District of Columbia Appropriation Act, 1941 (54 Stat. 307, c. 333, June 12, 1940).

It seems indisputable that the rents in question, when collected, became a part of the assets distributable *pro rata* to creditors, and that since the payment of the tax would decrease these assets, they are abated until the creditors have been paid in full.

The situation existing in the case of *Valuation Service Company, Petitioner,* v. *Commissioner of Internal Revenue* (1940), 41 B. T. A. 811, 815, would seem to apply, by anal-

ogy, to the situation in the instant case in so far as the purpose and intent of Congress in the enactment of the said Abatement Statute (U. S. C., Title 12, Sec. 570) is concerned. In that case the question was whether income derived by a subsidiary corporation of a State bank was subject to the provisions of Federal Income Tax Law, it appearing that the State bank was in liquidation, and the assets of the subsidiary corporation consisted of certain real estate holdings, the proceeds of liquidation of which accrued for the benefit of the creditors of the insolvent State bank. It was held, in effect, that substance rather than form should be considered, and that the bank and the subsidiary corporation should be considered "as parts of a single organization, all of whose assets are subject to the claims of the bank's depositors," and hence, that the income derived from the operations of the subsidiary corporation in the liquidation of the real estate, was not subject to Federal income taxation. The following extract from the opinion in that case (p. 815) dealing with the application of the abatement provisions of said Act of Congress of March 1, 1879, seems to be in point.

> "It is self-evident that the objective of the enactment in question, both in its original form and as amended, was to assist and benefit depositors of insolvent banks. As the Court of Claims says in *Johnston* v. *United States*, 17 Ct. Cls. 157, the provision 'was passed for the undoubted purpose of relieving depositors in national banks from the payment of certain taxes, not assessed upon them, but upon the banks of which they are only customers; taxes which, under the pre-existing law, they would indirectly be obliged to pay when a bank is so insolvent that all its capital is gone and it has nothing left with which to pay taxes, except the money of its depositors.' It is clear that the depositors are no more responsible for the present situation than they were for the tax deficiencies of the bank itself. They were not the organizers of the peti-

tioner, they had no voice in its management and no direct interest in its affairs. They are in danger, however, of being the innocent victims of circumstance. For, if respondent is successful in this proceeding, the entirely collateral element of the form of petitioner's organization as a separate corporation, instead of as the bank's real estate department, will result in denial to the depositors of that relief which it seems evident it was the purpose of Congress to afford; relief which they would have obtained without question in the absence of petitioner's intervening presence.

"In that view we can not avoid the conclusion that it will most nearly effectuate the evident legislative purpose to treat these taxes as being due only 'on account of such bank'; to treat petitioner and the bank as parts of a single organization, all of whose assets are subject to the claims of the bank's depositors, and whose unforgiven liabilities will inevitably diminish those assets; and so to apply the statute as to find that there is no deficiency in tax due from this petitioner under its terms."

A similar ruling was recently made by the United States Bureau of Internal Revenue concerning the Federal American National Bank and Trust Company, now in receivership in the District of Columbia. In that case, it appears that the Federal American National Bank and Trust Company was the owner of all of the stock of a subsidiary corporation—Rock Creek Park Estates, Inc. Substantially the entire assets of the subsidiary corporation consisted of real estate, and the question was whether the income resulting from the liquidation of said real estate by the subsidiary corporation was subject to the provisions of the Federal Income Tax Law. The receiver of the national bank, by his letter of December 28, 1939 (Appendix, p. 29), directed to the Internal Revenue Department, contended that inasmuch as the income of the subsidiary corporation accrued to the

national bank receivership for the benefit of its depositors and creditors, said income should not be subject to the Federal Income Tax Law, and should be permitted to be used entirely for the purpose of paying the depositors and other creditors of the national bank. The national bank had been placed in receivership at the time of the national banking crisis in 1933, and it will be observed from the letter of December 28, 1939, to the Internal Revenue Department, that the Collector of Internal Revenue had assessed income tax against the subsidiary corporation for the years 1936 and 1937, which, of course, was during the course of liquidation of the national bank by its receiver. In this respect, therefore, the situation is analogous to the situation in the instant case, inasmuch as the tax there sought was upon the operations of the national bank receivership, through the subsidiary corporation, just as in the instant case the tax levied by the District of Columbia is upon the operations of the national bank receivership.

The Bureau of Internal Revenue ruled:

> "Your contention that the corporation is exempt from income tax is conceded on behalf of the Commissioner of Internal Revenue."

and that a refund of the income taxes (levied, in effect, upon the national bank receivership) for the years 1936 and 1937 should be refunded. A copy of the ruling of the Bureau of Internal Revenue in said case will be found in the Appendix hereof, p. 32.

When U. S. C. Title 12, Sec. 570 is considered with U. S. C. Title 12, Secs. 192 and 194 and 548, these provisions of the National Bank Act clearly exempt the receiver of an insolvent national bank from payment of these taxes. Section 192 places exclusive control of the insolvent association in the hands of the Comptroller of the Currency and the

liquidation of its assets by a receiver who acts under his direction.

Cook County National Bank v. *United States* (1882), 107 U. S. 445, 448;

Easton v. *Iowa* (1903), 188 U. S. 220, 231;

Liberty National Bank v. *McIntosh* (C. C. A. 4th, 1927), 16 F. (2d) 906, 908;

Grindley v. *First National Bank of Detroit* (C. C. A. 6th, 1936), 87 F. (2d) 110, 112.

The effect of Section 194 is to make complete provision for the distribution *pro rata* of all funds derived from the liquidation of the assets of the association and requires the payment of all claims according to one rule of proportion applicable to all alike. *National Bank* v. *Colby* (1874), 21 Wall. 609, 613; *White* v. *Knox* (1884), 111 U. S. 784, 786.

If the tax claimed could be collected from this receiver, by the same reasoning any other similar tax operating generally in the District of Columbia would be collectible, which reasoning carried to a logical conclusion could make the receiver liable for an indefinite number of additional taxes. Such clearly was not the intent of Congress.

(b) *Petitioner was not engaging in business in the District of Columbia, and hence, was not taxable under the Business Privilege Taxing Acts in question.*

This bank, like many others similarly situated, was closed in March, 1933, and a receiver was appointed by the Comptroller of the Currency to liquidate its assets because of insolvency. All the assets of the bank, including its real estate, were taken over by the receiver for liquidation so that cash might be realized for *pro rata* distribution to creditors.

The business which the bank was empowered to do under its Articles of Association, such as receiving deposits and savings, lending moneys, *et cetera*, had ceased, so that the receiver was not engaging in that business. He was merely

liquidating the bank's assets to realize cash, the only distributable form to which they might be reduced for *pro rata* distribution in accordance with the National Bank Act (U. S. C. Title 12, Sec. 194) which makes *pro rata* distribution mandatory.

It so happened that the assets of the bank included real estate, which could not be sold advantageously at the time of depression. In these circumstances the receiver, acting for the best interests of the creditors, held the property until a favorable market might present itself. If in doing so he was required to collect rentals, that was not engaging in business, but was merely a necessary incident of liquidating the insolvent estate. The main object is not to conduct a real estate business for a profit, but to preserve the properties until they can be sold advantageously.

The receiver is the agent of the Comptroller of the Currency and is an officer of the United States charged with administering the affairs of the insolvent institution. *Auten* v. *U. S. National Bank,* (1899) 174 U. S. 125, 141, *Leonard* v. *Gage,* (C. C. A. 4th, 1938) 94 F. (2d) 19, 24. And the National Bank Act provides a complete and exclusive system whereby that receiver, acting under the direction of the Comptroller, shall liquidate the association. *Deitrick* v. *Greaney,* (1940) 309 U. S. 190, 194. When thus functioning, the receiver is not engaging in business, even though he holds stocks, bonds, real estate, or other like assets, and collects income in the form of dividends, interest or, as here, rentals.

In order to be engaging in business the person so engaging must contemplate as the primary object the reaping of a profit.

Sloan v. Commissioner of Internal Revenue, (C. C. A. 9th, 1933) 63 F. (2d) 666, 669;

Commissioner of Internal Revenue v. *Field,* (C. C. A. 2nd, 1933) 67 F. (2d) 876, 877;

Richards v. *Commissioner of Internal Revenue* (C. C. A. 9th, 1936) 81 F. (2d) 369, 372;
Sears v. *Hassett,* (C. C. A. 1st, 1940) 111 F. (2d) 961, 964;
Goddard v. *Chaffie,* (1861) 84 Mass. 395;
Beikler v. *Guenther,* (Iowa, 1903) 96 N. W. 895, 896;
Von Baumbach v. *Sargent Land Company,* (1917) 242 U. S. 503, 514-516.

When a corporation ceases to conduct the business for which it was organized and turns it over to another, the corporation is not engaged in business.

Public Service Ry. Co. v. *Herold,* (C. C. A. 3rd, 1916) 229 Fed. 902, 907;
Anderson v. *Morris & Essex R. R. Co.,* (C. C. A. 2nd, 1914) 216 Fed. 83, 91;
U. S. v. *Emery, Bird, Thayer Realty Co.,* (1915) 237 U. S. 28, 32.

The mere holding of real estate taken over from the bank and collecting rentals as an incident to such holding until the property can be sold advantageously, is not "engaging in business" or "carrying on or exercising for gain or economic benefit" a "business" from a legal standpoint, or within the meaning of the taxing statutes.

This Court has laid down the test of "engaging in business" in *Von Baumbach* v. *Sargent Land Company,* 242 U. S. 503, 516:

> "The fair test to be derived from a consideration of all of them is between a corporation which has reduced its activities to the owning *and holding of property and the distribution of its avails and doing only the acts necessary to continue that status, and one which is still active and is maintaining its organization for the pur-*

> *pose of continued efforts in the pursuit of profit and gain* and such activities as are essential to those purposes." (Emphasis ours.)

In *Flint* v. *Stone Tracy Company,* (1910) 220 U. S. 107, this Court held that a tax assessed upon the privilege of "carrying on or doing business" by a corporation applied to certain of the corporations held taxable because they were actually engaging in real estate and mining operations for a profit as allowed by their charters.

But in *Zonne* v. *Minneapolis Syndicate,* (1911) 220 U. S. 187 the question arose as to whether the same tax on the privilege of doing a corporate business could apply to a corporation originally organized for the purpose of owning and renting an office building, but which reorganized to hold title only and receive and distribute rentals. This Court held that the corporation was not engaged in doing business and was not taxable, and said at page 191:

> "The corporation had practically gone out of business in connection with the property and had disqualified itself by the terms of reorganization from any activity in respect to it. We are of opinion that the corporation was not doing business in such wise as to make it subject to the tax imposed by the act of 1909."

The rule of law in the *Zonne* case has been followed by the United States Court of Appeals for the District of Columbia in *Littlehales* v. *District of Columbia,* (App. D. C. 1940), 116 F. (2d) 297.

So a corporation is not engaged in business for purpose of the business privilege tax where its principal object and activities are preservation of the property, liquidation of the estate and distribution of the income.

McCoach v. *Minehill Railway Co.* (1913), 228 U. S. 295, 307;

U. S. v. *Emery* (1915), 237 U. S. 28, 32;

U. S. v. *Atlantic Coast Line* (C. C. A. 4th, 1938), 99 F. (2d) 6, 8;
Fidelity Bankers Trust Co. v. *Helvering* (App. D. C. 1940), 113 F. (2d) 14, 17;
Lyon Lumber Co. v. *Harrison* (C. C. A. 7th, 1940), 113 F. (2d) 443, 448;
Littlehales v. *District of Columbia* (D. C. App. 1940), 116 F. (2d) 297.

Viewed in the light of these rules and authorities, the receiver was not engaging in business and the business privilege taxing statute did not apply to petitioner.

(c) *The National Bank Act (U. S. C. Title 12, Sec. 548) furnishes the exclusive measure for the authority of a State or territory to tax national banks. Following this, the Act of July 1, 1902, as amended, Section 760, Title 20 D. C. Code 1929, describes the exclusive measure of the authority of the District of Columbia to tax national banks and the Acts here under consideration confer no additional power.*

U. S. C. Title 12, Sec. 548 provides in part as follows:

> " 'The several states may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by the net income * * *.' 'The imposition by any state of any one of the above four forms of taxation shall be in lieu of the others, * * *.' "

This statute furnishes the exclusive rule of authority of a State to tax national banks. *Bank of California National Association* v. *Richardson* (1919), 248 U. S. 476, 483; *People etc.* v. *Goldfogle* (1922), 234 N. Y. 345, cert. denied 261 U. S. 620 and any tax not in conformity with this statute is invalid. *Owensboro Natl. Bank* v. *Owensboro* (1899),

173 U. S. 664, 669; *First National Bank of Gulfport* v. *Adams* (1922), 258 U. S. 362, 364.

It was the policy of Congress in enacting this statute to provide for a uniform system of taxing national banks throughout the territorial limits of the United States. *Domenech* v. *National City Bank of New York* (1935), 294 U. S. 199, 204. And the action applies to a State, territory and to the District of Columbia. *Talbott* v. *Silver Bow County* (1891), 139 U. S. 438, 443.

In line with this policy of allowing one tax and one tax only as a basis for taxing the personal property of a national bank, the Act of July 1, 1902 (Sec. 760, Title 20 D. C. Code 1929) provides that each national bank in the District of Columbia shall make a return to the Board of Personal Tax Appraisers of the amount of its gross earnings and shall pay 6% on such earnings and the amendment thereto of March 3, 1917 provided that this tax on gross earnings shall be in lieu of all other taxation on the personal property of the bank. It is clear that Congress, in enacting this statute applicable to the District of Columbia, intended that the policy of allowing one tax only, on personal property, just as in the States, should be followed.

Further, the District of Columbia Revenue Acts in question specifically provide (Sec. 6) that national banks which pay taxes upon gross receipts shall be exempt from taxation under these statutes. The appointment of a receiver by the Comptroller does not dissolve a corporation and the assets remain the property of the bank. *Chemical National Bank* v. *Hartford Deposit Co.* (1896), 161 U. S. 1, 9; *Wittnebel* v. *Loughman* (C. C. A. 2nd, 1935), 80 F. (2d) 222, 224. And where the taxing authority is without power to tax the national bank, it is likewise unable to tax the assets of the bank in the hands of the receiver. *Rosenblatt* v. *Johnston* (1881), 104 U. S. 462, 463; *Gully v. First*

National Bank of Meridian (C. C. A. 5th, 1936), 81 F. (2d) 502, 506. The District National Bank is in liquidation but its assets, under the control of petitioner, are still assets of the bank. The property of the receivership under the authorities above mentioned is exempt in the hands of the receiver from taxation to the same extent as it was before his appointment. It is our contention that Section 760 of Title 20 of the D. C. Code provides the sole measure of the authority of the District of Columbia to tax the assets in the hands of petitioner for distribution to creditors and that the District Revenue Acts of 1937 and 1938 confer no additional authority for such taxation.

IX.

Conclusion.

It is therefore respectfully submitted that this case is one of general importance which should be decided by this Court in order to settle the conflict in the question presented. It is urged that a Writ of Certiorari should be granted and that this Court should review and reverse the decision of the United States Court of Appeals of the District of Columbia.

Respectfully submitted,

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